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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,567	01/14/2004	Leonid Shendelman	Shendelman	5929

156 7590 12/15/2004
KIRSCHSTEIN, OTTINGER, ISRAEL
& SCHIFFMILLER, P.C.
489 FIFTH AVENUE
NEW YORK, NY 10017

EXAMINER

SZUMNY, JONATHON A

ART UNIT PAPER NUMBER

3632

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,567

Applicant(s)

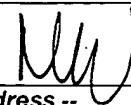
SHENDELMAN, LEONID

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This is the third office action for application number 10/758,567, Plate Stand, filed on January 14, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

Claim 33 is objected to because of the following informalities:

In line 9, "the same" should be --the plate--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 44 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 44, it is not clear if the applicant is intending to recite the item functionally or positively. With respect to claim 43, it appears the item is recited functionally ("for supportably receiving an item"), but then the applicant specifies the type of item in claim 44. The applicant must make it clear whether the item is recited positively or functionally. For the purposes of this office action, the Examiner will assume the item is recited merely functionally.

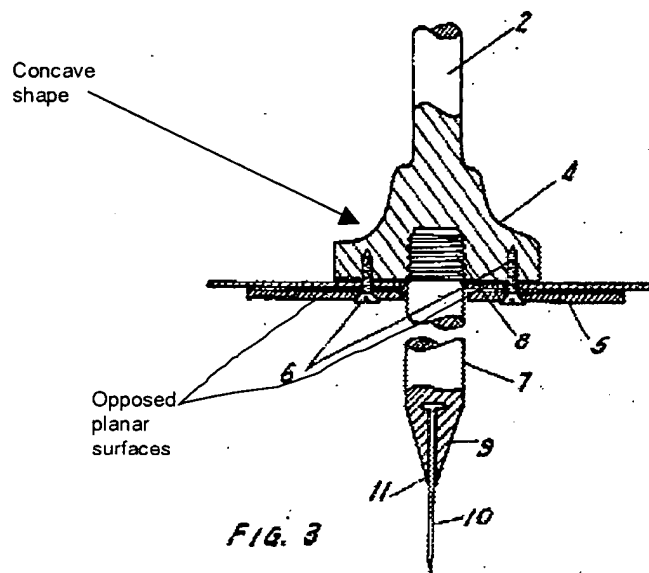
Claim Rejections - 35 USC § 102

Claims 33-36, 41 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,772,050 to Shih.

Shih '050 discloses a stand (figures 2,3) comprising a column (21,22) extending along a longitudinal axis between upper and lower end regions (above 224, near 212, respectively); a base (10) at the lower end region, for supporting the column in an upright orientation, a plate (31) having an upper surface, a lower surface, and at least one compartment (312); a platform (224) on the column above the base, for engaging the lower surface of the plate to support the plate from below the same; and a clamping element (40) mounted at the upper end region for axial movement between a clamped position in which the clamping element engages the upper surface of the plate and axially presses the plate against the platform to clamp the plate on the platform, and an unclamped position in which the plate is removable from the platform; wherein the plate has a plurality of compartments (312); wherein the plate is constituted of a disposable material (inherently, the material can be used once and thrown away); wherein the plate has a central opening (311) extending between the upper and lower surfaces of the plate, and wherein the upper end region of the column extends through the central opening for engagement with the clamping element; wherein the column is a single hollow cylinder (when connected as in figure 3) with a diameter inherently sized to be readily gripped in the palm of a user's hand; wherein the upper end region is upwardly open (see figure 2), wherein the item could inherently be a frusto-conical beverage container inserted into the upper end region of the column with a friction fit; wherein the clamping element has a concave shape (see figure 2, within 42,43, it is hollow and curved and thus concave).

Claims 33 and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent number 2,372,073 to Flournoy.



Flournoy '073 discloses a stand (figures 1,3) comprising a column (7) extending along a longitudinal axis between upper and lower end regions (near 5, near 9, respectively); a base (10) at the lower end region, for supporting the column in an upright orientation, a plate (bottom of 1) having an upper surface, a lower surface, and at least one compartment (above bottom surface of 1); a platform (5) on the column above the base, for engaging the lower surface of the plate to support the plate from below the same; and a clamping element (4) mounted at the upper end region for axial movement between a clamped position in which the clamping element engages the upper surface of the plate and axially presses the plate against the platform to clamp the plate on the platform, and an unclamped position in which the plate is removable from the platform; wherein the plate has a central

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opening (see figure 3) extending between the upper and lower surfaces of the plate, and wherein the upper end region of the column extends through the central opening for engagement with the clamping element; wherein the upper end region of the column is threaded (8), and wherein the clamping element threadedly engages the upper end region of the column; wherein clamping element has an annular internal thread; wherein the clamping element has opposite planar surfaces (above, they are opposed because one surface is on the left side, and one surface is on the right side, thus they are opposed); wherein the clamping element has a concave shape (above).

Claim Rejections - 35 USC § 103

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shih '050 in view of U.S. Patent number 5,873,312 to Mauro-Vetter.

Shih '050 teaches the previous stand wherein the stand includes tubular cylindrical sections, but fails to specifically teach each section to include a plurality of sections that are arranged for sliding lengthwise movement relative to one another with a lock for locking the sections together. Nevertheless, Mauro-Vetter '312 divulges a stand with telescoping sections (30,32) with a lock (60) for locking the sections together. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the stand of Shih '050 so as to have telescoping sections with a lock so as to provide for a more adjustable stand hence increasing the utility of the stand.

Response to Arguments

Applicant's arguments filed November 5, 2004 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 33-45 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

(703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized, looping flourish extending to the right.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
December 10, 2004